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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

SUNNY ACRES, INC. et al., Plaintiffs, v. COUNTY OF SAN LUIS OBISPO, SAN LUIS OBISPO COUNTY BOARD OF SUPERVISORS, Defendants.
COUNTY OF SAN LUIS OBISPO, Cross-Complainant, v. SUNNY ACRES, INC., DAN DE VAUL, and DOES 1 through 20, inclusive, Cross-Defendants.

Case No.: CV09-0360

RULING AND ORDER GRANTING
CROSS-COMPLAINANT'S MOTION
FOR PRELIMINARY INJUNCTION

INTRODUCTION AND PROCEDURAL HISTORY

On June 17, 2009, Petitioners filed this writ of mandate to prevent the County of San Luis Obispo from moving forward with nuisance abatement proceedings directed toward Sunny Acres, Inc. According to the Petition, Sunny Acres is a nonprofit

1 organization providing a "clean and sober living environment to those in recovery for
2 drug and alcohol addiction." Aside from Sunny Acres, petitioners include Dan De
3 Vault, who operates the recovery program on his 72-acre farm property at 10660/10340
4 Los Osos Valley Road, and seven residents of his recovery program.

5 Petitioners claim that the County is discriminating against the approximately 30
6 people living at Sunny Acres (recovering addicts who pay \$300 a month for rent), and
7 also that the County has violated the Federal Fair Housing Act, the San Luis Obispo
8 County Housing Element and the Land Use Ordinance.

9 Claiming that there is a significant public interest in safeguarding against illegal,
10 substandard housing, the County has cross-complained against Sunny Acres, Inc., and
11 Dan De Vault, and it now seeks a preliminary injunction requiring them to abate an
12 ongoing public nuisance by complying with various prohibitory and mandatory
13 conditions.

14 On June 17 and 18, 2010, the Court heard arguments in the County's preliminary
15 injunction motion. The County appeared through its counsel of record, Porter Scott,
16 APC, by Terence J. Cassidy, Esq., and Deputy County Counsel Nina Negranti. Up until
17 June 17, 2010, cross defendants were on represented by counsel and submitted no
18 opposition to the injunction request. On the morning of the hearing, however, John W.
19 Belsher, Esq., substituted in as counsel of record for Mr. De Vault and Sunny Acres.
20 Mr. De Vault submitted declarations in opposition to the injunction.

21 Although no testimony was adduced at the hearings, the parties submitted and
22 relied upon extensive declarations, photographs and other exhibits, as well as requests
23 for judicial notice and legal argument. After two hearings, the Court took the matter
24 under submission for further review of the evidence.

25 The County seeks to enjoin Mr. De Vault from maintaining or operating the property
26 in a manner that is hazardous to the health, safety and welfare of the general public, from
27 maintaining a public nuisance at the property, and from permitting or allowing any

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1 conditions to exist at the subject property in violation of California State Codes and the
2 San Luis Obispo County Code.¹

3 Aside from contesting the strength of the County's evidence, Mr. De Vul responds
4 that Sunny Acres provides a valuable public service, that the residents have no other
5 possible places to live, and that the County is harassing him and unreasonably
6 interfering with the operation of his business.

7 DISCUSSION

8 There are three potential remedies for a public nuisance, including criminal
9 proceedings, civil actions, or administrative abatement hearings. Civil Code §3491.
10 *See Flahive v. City of Dana Point* (1999) 72 Cal. App.4th 241, 245 and fn.5. A public
11 entity is free to choose among the three types of remedies. *Id.* at 244.

12 Since at least January 2005, the County has been conducting administrative
13 nuisance abatement proceedings for multiple violations of the County Code. Many of
14 these violations have been the subject of investigations, inspections, notices of
15 violations, and four Nuisance Abatement Hearings before the Board of Supervisors.
16 After hearings, the Board found that these violations constituted public nuisances and
17 ordered their abatement. (Exhibit N)²

18 The County has a constitutional right to “make and enforce within its limits all
19 local, police, sanitary, and other ordinances and regulations not in conflict with general
20 laws.” (Cal. Const., art. XI, § 7.) From a review of the record, the Court concludes that
21 the County has established conditions constituting an ongoing public nuisance,
22 including manifold County Code violations, but also conditions posing a threat to the
23 safety, health and welfare of the tenants and neighbors of the property. *See Golden Gate*
24 *Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 255-256
25 (planning code violations constitute a public nuisance); *City and County of San*
26

27 1 The County also sought appointment of a receiver under CCP §564(b) and Health and Safety
28 Code §17980.7, as well as an ancillary injunction prohibiting De Vul from interfering with the receiver.
At the hearing on June 17, 2010, the County withdrew its request for appointment a receiver, without
prejudice, pending the cross-defendants' compliance with preliminary injunctive relief.

2 All exhibits are referenced in the declaration of Marie Cowan, Senior Code Enforcement
Investigator for the County of San Luis Obispo.

1 *Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 401 (violations of city building codes
2 constitute public nuisance); *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241,
3 244 (conversion of garage into studio apartments without obtaining permits violated the
4 municipal code and constituted public nuisance). Further, the record discloses that,
5 during an almost-10-year period, Mr. De Vault has operated Sunny Acres with an
6 overwhelming resistance to compliance, as well as a pattern of delay and
7 obstructionism.³

8 Since 2001, Sunny Acres has been the subject of multiple enforcement actions
9 for land use and County Code violations. These recurring violations include illegal
10 habitation of unpermitted structures, unpermitted grading and stockpiling of materials,
11 unpermitted construction, and improper storage of vehicles.

12 In September 2007, an inspection of the property revealed numerous fire,
13 plumbing, electrical and structural hazards, which were posted as "Dangerous" with an
14 order not to enter. (Exhibit H)

15 In February 2008, an inspection of Sunny Acres conducted pursuant to an
16 administrative search warrant confirmed ongoing violations of the Fire Code, Building
17 Code, and Health and Safety Code with respect to wiring, electrical, fire exits,
18 ventilation, and structures. (Exhibit E)

19 On July 14, 2009, a fire broke out on the premises, during the response to which
20 it was discovered that additional unpermitted structures were being used for human
21 habitation, and that other structures were continuing to be used as well. (Exhibit L)

22 More particularly, these inspections revealed that: the "stucco" agricultural barn
23 had been converted into a "dormitory-style residence" without a building or land-use
24 permit, in violation of County Code § 19.01.030 (Exhibit H); the "accessory shed" had
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27 ³ It is unclear whether judicial review should be based upon the administrative record. *Dunitz v.*
28 *City of Los Angeles* (1959) 170 Cal.App.2d 399, 404. In any event, much of the evidence submitted as
exhibits is also part of the administrative record. The evidence not already in the record is likely
admissible under one of the exceptions set forth in *Western States Petroleum Association v. Superior*
Court (1995) 9 Cal 4th 559,573 and fn.4.

1 been converted into living quarters and bathrooms without a permit, in violation of CFC
2 605.5 and 703.1.1 (Exhibit N); there were new sheds under construction for use as
3 living quarters as to which no permits had been issued (Exhibit N); and, the “dairy
4 barn” had been converted into a public dining room and a commercial kitchen,
5 containing electrical, plumbing, mechanical and septic systems, all without the proper
6 permits or inspections, in violation of CBC Appendix Section 105.1, CEC 89.108.4.1
7 and CPC & UMC 108.4.1 (Exhibit H).

8 The County also discovered that several recreational vehicles (including
9 campers, trailers, motor homes, etc) on the property were being supplied by
10 unauthorized power sources, and were surrounded by overgrown vegetation, in
11 violation of CFC 605.5, 605.6 and CFC 508.5.5 (Exhibit N), and that some of these
12 RVs were being used for permanent habitation, in violation of County Code §19.20.026
13 (Exhibit H).

14 On June 23, 2009, the County’s Chief Building Official ordered Defendants to
15 cease use of all these structures for human habitation by July 30, 2009, and to submit
16 permit applications by August 23, 2009, to either demolish or restore each structure to
17 its original legal use. (Exhibit M)

18 The increase in illegal housing, coupled with the absence of a permitted septic
19 system, heightened the County's concern that the onsite wells could be contaminated.
20 Later tests determined that the water supply was indeed contaminated with coliform
21 bacteria and could not be used for drinking, cooking, dishwashing, showering, or hand
22 washing. The Health Department then ordered an alternate source of drinking water to
23 be supplied by August 14, 2009. (Exhibit P) The Health Department also discovered
24 16 hazardous waste violations, and it ordered them to be corrected on July 23, 2009.
25 (Exhibit Q)

26 In sum, Mr. De Vault and Sunny Acres have been charging a fee of
27 approximately \$300 each month to approximately 30 vulnerable tenants/clients in

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1 illegal, dangerous and substandard structures that have been posted as unlawful to enter.
2 (Exhibit F)

3 Aside from disputing the evidence, the cross-defendants' main contention is that, if
4 residents of Sunny Acres are displaced, they will be left homeless with no other options.
5 Although this contention does not provide a legal defense to the operation of a nuisance,
6 the Court pauses here to address this concern.

7 It must be said that providing public housing alternatives for individuals suffering
8 from drug and alcohol addiction within San Luis Obispo County is critically important.
9 From the Court's own experience hearing criminal cases, and supervising individuals
10 struggling with mental illness and/or drug and alcohol addiction, there is indeed a
11 shortage of viable alternatives for this vulnerable population in our midst. There are
12 between 2,500 and 4,000 people homeless in San Luis Obispo County every night,
13 according to the Community Action Partnership of San Luis Obispo County, Inc.
14 website.⁴ Particularly in light of the current State budget crisis, adequate housing and
15 treatment alternatives for these groups of individuals are inadequate.

16 However, local governments have an equally important responsibility to ensure that
17 the housing and treatment services that *are* provided to these at-risk individuals meet
18 certain minimum health and safety criteria. It is an oversimplification to say that *any*
19 housing is better than *no* housing. Such reasoning would condone the maintenance of
20 slum housing, tenements or other human habitations irrespective of the risks they pose
21 to the health and safety of the residents and community. Moreover, the cross-
22 defendants have been telling the County for years that they intend to make the necessary
23 repairs and improvements to the property. Yet they have repeatedly failed to do so,
24 even though, as admitted in their own pleadings, cross-defendants collectively receive
25 over \$100,000 per year from the program participants.

26 The County's evidence shows that the tenants of Sunny Acres live in substandard,
27 illegal conditions that also pose a threat to their health and welfare, as well as the health
28

4 Community Action Partnership is a private, nonprofit, public benefit corporation, that provides an umbrella of safety-net services to approximately 43,000 persons across numerous central and southern California counties.

1 and welfare of others residing in the area. As a consequence, the potential harm to the
2 public from failing to act outweighs the potential harm to the cross-defendants and the
3 Sunny Acres' residents who will be forced to relocate. *IT Corp. v. County of Imperial*
4 (1983) 35 Cal.3d 63. Further, the County is likely to succeed on the merits of this case
5 when it eventually goes to a final hearing. The cross-defendants' potential of prevailing
6 on the merits is improbable.

7 With respect to the scope of the injunction, the Court recognizes that mandatory
8 injunctive relief should be issued only in unusual situations where a right to such relief
9 is clearly established. *Teachers Ins. & Annuity Assn. v. Furlotti* (1999) 70 Cal.App.4th
10 1487. This case qualifies as an unusual situation demanding preliminary, mandatory
11 injunctive relief.

12 The potential of harm to the public and to the tenants, who must continue to live
13 in substandard conditions where the County has already ordered cessation of use of the
14 structures for human habitation, is significant. The water supply is contaminated with
15 coliform bacteria and cannot be used for drinking, cooking, dishwashing, hand washing
16 or showering. The threat of electrical and fire hazards has already been demonstrated
17 by a previous fire.

18 There is also demonstrable intransigence by Mr. De Vul. In September 2009,
19 he was convicted by a jury of two misdemeanor counts of maintaining a fire hazard and
20 unlawful storage of mobile homes and commercial vehicles. (Exhibit R) The Court
21 takes judicial notice of Criminal Case No. 418283 showing that, rather than serving no
22 jail time and correcting these violations as a condition of probation, Mr. De Vul
23 refused probation and elected to serve 90 days in jail and to pay a fine of \$1000.

24 Given the gravity of the current circumstances and Mr. De Vul's intransigence
25 in compliance with abatement orders, a preliminary mandatory injunction is warranted.

26 With respect to relocation expenses, the provisions of Health and Safety Code
27 §1798.7(c)(3) provide that, if a receiver is appointed, the owner of any substandard
28 building and his or her agent shall be enjoined from collecting rents from the tenants.

1 Subsection (c)(6) provides for the payment of a tenant's relocation benefits by the
2 property owner under certain circumstances. Although the appointment of a receiver
3 has been placed on hold, this Court possesses common law authority to prohibit further
4 collection of rents.

5 Where a substantial breach of the warranty of habitability has occurred in
6 unlawful detainer proceedings, it is the Court's duty to determine the "reasonable rental
7 value of the premises in its untenable state to the date of trial" as determined by
8 applicable building and housing code standards affecting health and safety. CCP §
9 1174.2(a)(1). Further, if the tenant brings a damages suit, the tenant is "refunded" an
10 amount of rent already paid to the extent the payment exceeds the adjusted rental value
11 determination. *Quevedo v. Braga* (1977) 72 Cal.App.3d Supp.1, 9.

12 By parity of reasoning, the cross-defendants will be ordered not to charge rent or
13 fees to the tenants of Sunny Acres for tenancies in all structures that have been deemed
14 uninhabitable. If an appropriate request is brought to its attention, the Court will also
15 consider supplemental remedies with respect to rental refunds.⁵

16 **PRELIMINARY INJUNCTIVE RELIEF**

17 The Court concludes that the following specific injunctive terms are not only fully
18 supported by the evidence, but also necessary and appropriate to abate the long-standing
19 public nuisance at the property located at 10660/10340 Los Osos Valley Road.
20 Accordingly, IT IS HEREBY ORDERED as follows:

21 1. Cross-Defendants Dan De Vul and Sunny Acres, Inc. shall have all
22 structures (mobile homes, sheds, garden sheds, tents, dairy barn, stucco barn, and RVs)
23 vacated, except the legal farmhouse and Mr. De Vul's apartment, by August 20, 2010;

24 2. No further rental or program payments shall be collected from any tenant
25 until further order of the Court;

26 _____
27 ⁵ Based on this preliminary injunction, the Court hereby takes off calendar the County's Motion
28 for Appointment of a Receiver.

1 3. Cross-Defendants Dan De Vault and Sunny Acres, Inc. shall ensure that
2 mobile homes, sheds, garden sheds, tents, dairy barn, stucco barn, and RVs remain
3 unoccupied until further order of the Court;

4 4. Cross-Defendant Dan De Vault shall provide an alternate safe and secure
5 source of drinking water (such as bottled water from an approved vendor) to everyone
6 on his property, and shall submit copies of well permits or well completion reports for
7 all the wells on his property (in compliance with the County Health Department Order
8 of July 30, 2009) no later than September 1, 2010;

9 5. Cross-Defendant Dan De Vault shall: close and seal all containers holding or
10 storing hazardous wastes; implement a procedure to ensure that waste accumulation
11 meets the minimum requirements of Title 22 CCR §66262.34; properly label all
12 containers of hazardous waste; take all action necessary to handle hazardous wastes, to
13 minimize hazardous waste releases, and to transfer wastes from containers in poor
14 conditions ones in good condition; manage use oil as a hazardous waste until it is
15 recycled; properly manage used oil filters that are to be recycled; manage solvents and
16 other recyclable materials as hazardous waste until they are recycled; complete an
17 inventory of hazardous materials and implement a procedure to ensure that the
18 inventory of hazardous materials is updated; develop an operations and maintenance
19 plan that minimizes release of hazardous waste to the environment and ensures that the
20 required equipment (including an alarm and communication system) is in place and
21 operational (in compliance with the County Health Department Order dated July 23,
22 2009) no later than September 1, 2010;

23 6. Cross-Defendant Dan De Vault shall return the stucco barn to an ag-exempt
24 barn or demolish it no later than October 1, 2010. In the event a County demolition
25 permit has not been issued by August 20, 2010, the Court will hold a hearing on
26 September 9, 2010, as to the reasons therefor;

27 7. Cross-Defendant Dan De Vault shall remove all but 10 stored RVs owned by
28 tenants at the De Vault property by October 1, 2010;

1 8. The dairy barn shall be returned to an ag-exempt barn or demolished by
2 October 1, 2010. In the event a County removal or construction permit has not been
3 issued by August 20, 2010, the Court will hold a hearing on September 9, 2010, as to
4 the reasons therefor;

5 9. Cross-Defendant Dan De Vault shall use the garden sheds only for storage
6 and not human habitation;

7 10. Cross-defendant Dan De Vault shall demolish or receive authorization for
8 the accessory shed and bathroom near farmhouse/stucco barn by October 1, 2010. In
9 the event an appropriate County permit has not been issued by August 20, 2010, the
10 Court will hold a hearing on September 9, 2010, as to the reasons therefor;

11 IT IS FURTHER ORDERED that the County Planning and Building
12 Department and Health Department may conduct inspections on or about the following
13 dates to determine compliance with the terms of this injunction, as follows:

- 14 • August 23, 2010: Item 1 (vacate all structures);
- 15 • September 6, 2010: Items 4 and 5 (water and hazardous waste);
- 16 • October 11, 2010: Items 3 and 6 - 10 (structures remain unoccupied, stucco
17 barn, RVs, dairy barn, garden sheds, accessory shed/bathroom).

18 IT IS SO ORDERED.

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20 DATED: July 2, 2010

_____/s/_____
CHARLES S. CRANDALL
Judge of the Superior Court

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